

EXHIBIT A

Ferguson vs. Ryder

John M. Roberts, M.D., 2/4/03

1	UNITED STATES DISTRICT COURT	1	<u>STIPULATIONS</u>	3
2	SOUTHERN DISTRICT OF OHIO	2	It is stipulated by counsel for the	
3	WESTERN DIVISION	3	respective parties that the deposition of JOHN	
4	---	4	M. ROBERTS, M.D., a witness herein, may be	
5	DAVID FERGUSON, et al.:	5	taken at this time by the defendants as upon	
6	Plaintiffs, :	6	cross-examination and pursuant to the Federal	
7	vs. : CASE NO. C-1-02-039	7	Rules of Civil Procedure and Notice To Take	
8	RYDER SYSTEMS, INC., :	8	Deposition, all other legal formalities being	
9	Et al., :	9	waived by agreement; that the deposition may be	
10	Defendants. :	10	taken in stenotypy by the Notary Public-Court	
11	---	11	Reporter and transcribed by her out of the	
12	Deposition of JOHN M. ROBERTS, M.D., a	12	presence of the witness; that submission of the	
13	witness herein, taken by the defendants as upon	13	deposition to the witness for examination and	
14	cross-examination, pursuant to the Federal	14	signature is expressly waived.	
15	Rules of Civil Procedure and pursuant to Notice	15	---	
16	To Take Deposition and agreement by counsel as	16		
17	to the time and place and stipulations	17		
18	hereinafter set forth, at the offices of 9250	18		
19	Blue Ash Road, Cincinnati, Ohio, at 5:40 p.m.	19		
20	on Tuesday, February 4, 2003, before M. Sue	20		
21	Lopreato, a Registered Merit Reporter and	21		
22	Notary Public within and for the State of Ohio.	22		
23	---	23		
24		24		
25		25		

1	APPEARANCES:	2	<u>I N D E X</u>	4
2	On behalf of the plaintiff:	2		
3	MICHAEL J. HONERLAW, ESQ.	3	BY MR. SCHOENI: PAGE	
4	of	4	Cross 6	
5	Honerlaw & Honerlaw	5	Recross 35	
6	9227 Winton Road	6	BY MR. WINTER:	
7	Cincinnati, Ohio 45231	7	Cross 31	
8	On behalf of the defendant,	8		
9	Allied System & Allied Automotive	9		
10	Group:	10	EXHIBITS	
11	ROBERT A. WINTER, JR., ESQ.	11		
12	of	12	<u>Exhibit</u> <u>Description</u> <u>Marked</u>	
13	Hemmer, Spoor, Pangburn &	13	Defendant's 1 History and Physical 5	
14	DeFrank, PLLC	14	of David E. Ferguson,	
15	250 Grandview Drive, Suite 200	15	1/2/01, by John M.	
16	Ft. Mitchell, Kentucky 41017	16	Roberts, M.D.	
17	On behalf of the defendant,	17	Defendant's 2 Letter to M. Honerlaw 5	
18	Commercial Carriers, Inc., and	18	from J. Roberts, M.D.,	
19	Ryder Systems, Inc.:	19	1/22/03.	
20	K. ROGER SCHOENI, ESQ.	20	Defendant's 3 Medical Report, 6/9/95. 5	
21	of	21		
22	Kohnen & Patton	22	Defendant's 5 Kettering Memorial Hospital 5	
23	1400 Carew Tower	23	Emergency Room Visit, 5/7/97.	
24	441 Vine Street	24	Defendant's 6 Kettering Medical Center 5	
25	Cincinnati, Ohio 45202	25	Medical Imaging Report,	
	On behalf of the defendant,		L Spine Complete, 5/7/97.	
	Hanes Supply:		Defendant's 7 Kettering Medical Center 5	
	CRAIG R. PAULUS, ESQ.		Medical Imaging Report,	
	of		T Spine Complete, 5/7/97.	
	Taft, Stettinius & Hollister			
	1800 Firststar Tower			
	425 Walnut Street			
	Cincinnati, Ohio 45202			

Ferguson vs. Ryder

John M. Roberts, M.D., 2/4/03

1	Exhibit	Description	Marked	5	1	fashion?	7
2	Defendant's 10	Reconstructive Orthopaedics, Inc. Treatment Report.		5	2	A. Yes.	
3					3	Q. Okay. You have a more complete	
4	Defendant's 12	The Franciscan Workplace Rehabilitation Center		5	4	CV, I take it?	
5		Functional Capacity Evaluation, 7/8/97.			5	A. Yes.	
6					6	Q. You provided each of the defense	
7	Defendant's 17	Letter to M. Honerlaw from B. Siegel, D.O., 5/10/99.		5	7	counsel today an opportunity to review your	
8					8	file, and I appreciate you agreeing to do that.	
9	Defendant's 18	Kettering Medical Center Medical Imaging Report, L Spine Complete, 9/7/00.		5	9	I have premarked as Defendant's Exhibit 1 what	
10					10	I believe to be most of that file. I think	
11					11	there may be two or three or a handful of	
12	Defendant's 20	Curriculum Vitae of John M. Roberts, M.D.		5	12	documents that are missing.	
13					13	MR. HONERLAW: Roger, are these	
14	Defendant's 21	Letter to M. McTighe, M.D. from J. Roberts, M.D., 1/2/01.		5	14	copies for me to look at?	
15					15	MR. SCHOENI: Those are your	
16					16	copies. I made copies for everyone.	
17	Defendant's 22	Part II, Complete on Initial or Subsequent Visits, 1/2/01.		5	17	A. Yes, I think this constitutes the	
18					18	bulk of the chart. I can't say with certainty	
19					19	it's every page, but it looks to be pretty	
20					20	close.	
21					21	Q. I'll show you what's been marked	
22					22	as Defendant's Exhibit 21 and 22.	
23					23	A. Yes, these are from my chart.	
24					24	Q. And Exhibit 2, which I think if we	
25					25	take 1, 22 and 2 all together, it should be	
1	JOHN M. ROBERTS, M.D.			6	1	pretty close to just about everything that's in	8
2	a witness herein, being first duly sworn, as				2	your file?	
3	hereinafter certified, was examined and deposed				3	A. It pretty much is.	
4	as follows:				4	Q. I'm not going to walk through your	
5	(Defendant's Exhibit Nos. 1-22				5	entire file here today, but I would like to go	
6	were marked for identification.)				6	through some of it with you, Dr. Roberts. Now,	
7	CROSS-EXAMINATION				7	you first saw Mr. Ferguson on January 2nd of	
8	BY MR. SCHOENI:				8	2001; is that right?	
9	Q. Please state your name, sir.				9	A. Yes.	
10	A. John Mark Roberts.				10	Q. And he was a referral patient; is	
11	Q. Dr. Roberts, my name is Roger				11	that correct?	
12	Schoeni. I'm a lawyer at the law firm of				12	A. Yeah.	
13	Kohnen & Patton here in Cincinnati.				13	Q. And who referred him to you?	
14	A. Okay.				14	A. Dr. Marty McTighe.	
15	Q. And I am representing and				15	Q. And when you saw him on	
16	defending one of the defendants in the lawsuit				16	January 2nd of 2001, did you take a history?	
17	that one of your patients, David Ferguson, has				17	A. Yes.	
18	filed in federal district court. Let me show				18	Q. And did you perform a physical	
19	you what we've marked as Defendant's				19	examination?	
20	Exhibit 20, and I'll ask you to identify it.				20	A. Yes, I did.	
21	A. That's my resume.				21	Q. And then a few days ago,	
22	Q. And is that current as of				22	January 23rd of 2003, you authored an opinion	
23	February 4th, 2003?				23	letter at the request of Mr. Honerlaw; is that	
24	A. Relatively so, yes.				24	correct?	
25	Q. And it's in an abbreviated				25	A. Yes.	

Ferguson vs. Ryder

John M. Roberts, M.D., 2/4/03

<p>9</p> <p>1 Q. And your opinions are indicated in</p> <p>2 that letter, and I believe in the last</p> <p>3 paragraph or two you indicate your opinions are</p> <p>4 to a reasonable degree of medical certainty; is</p> <p>5 that correct?</p> <p>6 A. Yes.</p> <p>7 Q. And when you use the term</p> <p>8 reasonable degree of medical certainty, you</p> <p>9 mean that's based upon your training, your</p> <p>10 experience, your education, the history that</p> <p>11 you would have taken, the physical that you</p> <p>12 would have conducted, and any other medical</p> <p>13 records that would have been available for you</p> <p>14 to review; is that correct?</p> <p>15 A. Yes.</p> <p>16 Q. And if any of those elements is</p> <p>17 lacking or in error in any way, it could</p> <p>18 perhaps cause you to change your opinions; is</p> <p>19 that correct?</p> <p>20 A. Yes.</p> <p>21 Q. Now, when you took the history</p> <p>22 from Mr. Ferguson on January 2nd of 2001, what</p> <p>23 did he tell you?</p> <p>24 A. His chief complaint was that of</p> <p>25 low back pain and occasional left leg pain. I</p>	<p>11</p> <p>1 A. Yes.</p> <p>2 Q. And it says non-contributory?</p> <p>3 A. Yes.</p> <p>4 Q. What did you mean when you</p> <p>5 dictated non-contributory?</p> <p>6 A. It means that there was nothing</p> <p>7 discussed or provided that related to the back.</p> <p>8 Q. And did you ask him if he had had</p> <p>9 previous problems with back complaints? By</p> <p>10 previous, I mean prior to his September 4,</p> <p>11 2000 --</p> <p>12 A. Yes, we do.</p> <p>13 Q. And is that a significant part of</p> <p>14 your treatment?</p> <p>15 A. It's important in, as we all know,</p> <p>16 establishing causation. It's important in</p> <p>17 establishing duration of symptoms and type of</p> <p>18 treatment approaches you might take.</p> <p>19 Q. And did you ask Mr. Ferguson if he</p> <p>20 had any prior back problems before his accident</p> <p>21 of September 4, 2000?</p> <p>22 A. Yes, I'm sure we did. I do on</p> <p>23 every exam of a new patient.</p> <p>24 Q. And if he would have indicated</p> <p>25 that he had prior back problems, you would have</p>
<p>10</p> <p>1 understand that he was a driver for a company</p> <p>2 called Allied Systems. He was working on top</p> <p>3 of a car carrier, truck of some type, and the</p> <p>4 security cable broke and he fell to the ground.</p> <p>5 I don't know what his initial care</p> <p>6 was. I do know that Dr. McTighe ultimately was</p> <p>7 the orthopaedic surgeon who was taking care of</p> <p>8 him for his back and leg pain. He informed me</p> <p>9 that the pain in the left leg was produced by</p> <p>10 any physical endeavor, and it was a typical</p> <p>11 description of radicular pain with radiation of</p> <p>12 the lateral calf. He rated it on a scale from</p> <p>13 zero to ten as a six to eight over ten. He</p> <p>14 said his back pain was constant at a level of</p> <p>15 five over ten, and he said that he had no</p> <p>16 similar symptoms in the past.</p> <p>17 Q. Okay. Now, when he told you he</p> <p>18 had no similar symptoms in the past, what did</p> <p>19 you understand that to mean?</p> <p>20 A. No major back or leg symptoms, I</p> <p>21 would suppose. I really don't define it in any</p> <p>22 more detail than that.</p> <p>23 Q. Now, a few lines down on the first</p> <p>24 page of your history and physical, there's a</p> <p>25 line called medical history. Do you see that?</p>	<p>12</p> <p>1 expected him to disclose those to you, wouldn't</p> <p>2 you?</p> <p>3 A. Normally so, but I guess it's a</p> <p>4 matter of magnitude as to what they perceive as</p> <p>5 being important and relevant. I wish patients</p> <p>6 would allow me to make that decision, but</p> <p>7 sometimes they do that on their own, where they</p> <p>8 might only have a few visits to a chiropractor,</p> <p>9 and they already decided it's not pertinent.</p> <p>10 So normally, I would prefer that they give me</p> <p>11 all the information in that regard.</p> <p>12 Q. But I suppose it's not all that</p> <p>13 uncommon if a person has had only minor</p> <p>14 complaints or symptoms over a number of years</p> <p>15 and sought only occasional treatment, to</p> <p>16 neglect to mention that?</p> <p>17 A. That's correct.</p> <p>18 Q. But on the other hand, if someone</p> <p>19 had been off work for a number of weeks, had</p> <p>20 filed workers' comp. claims, and had been</p> <p>21 diagnosed as having a low back condition that</p> <p>22 was chronic in nature, you certainly would have</p> <p>23 expected that to have been disclosed?</p> <p>24 A. Typically, yes.</p> <p>25 Q. And it's important, in your</p>

Ferguson vs. Ryder

John M. Roberts, M.D., 2/4/03

<p>13</p> <p>1 treatment of your patients, that they be 2 forthright with you, isn't it? 3 A. To the best of their knowledge, 4 yes. 5 Q. Now, after you completed the 6 history portion of your initial visit with 7 Mr. Ferguson, you performed an actual physical 8 examination, didn't you? 9 A. Yes, I did. 10 Q. And what did your physical 11 examination consist of, Dr. Roberts? 12 A. When you perform an examination 13 such as this, you look at all the different 14 neurologic functions, that being motor, 15 strength, sensation, reflexes, one's gait. And 16 the only abnormality I found was that he had 17 questionable decreased sensation in the left L4 18 and L5 dermatomal pattern; that is, the exact 19 distribution of each of those nerves, L4 and 20 L5, decreased sensation of pinprick. 21 He had no reproduction of the pain 22 when the lower legs were elevated, so there was 23 no major evidence of neurologic compression 24 throughout the exam, so basically, the only 25 thing I found was the decreased sensation in</p>	<p>15</p> <p>1 My note indicates he had a small 2 degree of apophyseal joint arthropathy, which I 3 stated was consistent with his age and activity 4 level. Apophyseal joint arthropathy is just 5 another word for arthritic change of the facet 6 joints, or small linkages in the back. 7 Q. Now, the apophyseal joint 8 arthropathy you say is essentially an arthritic 9 change? 10 A. Yes. 11 Q. And would not have been 12 traumatically induced? 13 A. No. That's a long-standing 14 change. It's just due to one's level of 15 physical activity. 16 Q. And same question with regard to 17 the moderate lumbar spondylosis? 18 A. Yes. 19 Q. All right. Then what was the 20 assessment that you made on January 2, 2001? 21 A. Three different things. The first 22 was the lumbar sprain/strain, which I 23 attributed to the accident of 9/4/2000. Second 24 thing was bilateral hamstring contractures, 25 which I didn't comment to you earlier. When</p>
<p>14</p> <p>1 that particular area. 2 Q. Okay. What does it mean by 3 decrease sensation in the left L4-L5 dermatoma? 4 A. That there is some involvement of 5 those nerve. 6 Q. And L4-L5 is a low back area? 7 A. Yes, those are the lumbar 4 and 8 lumbar 5 nerve roots. 9 Q. And did you actually place your 10 hands on Mr. Ferguson to make that assessment? 11 A. Yes. 12 Q. Okay. Now, did you have any 13 diagnostic studies available for you to review 14 on January 2nd of 2001? 15 A. Yes. We had radiographs of the 16 lumbar spine. My note indicates he had a 17 moderate degree of lumbar spondylosis, which is 18 another word for early degenerative arthritis 19 involving the lumbar spine. We also had an MRI 20 scan, the date of which I did not record. I 21 suppose that had been obtained by Dr. McTighe, 22 and that showed that he had a small 23 non-compressive disc herniation at L5-S1, 24 non-compressive referring to no evidence of 25 neural compression.</p>	<p>16</p> <p>1 hamstrings are tight, they can contribute to 2 chronic back pain. I think they played some 3 role here. And then the third topic was -- or 4 third assessment was that of minor facet 5 arthropathy, which I said is non-contributory 6 to his work-related condition. 7 Q. So your initial assessment, in any 8 event, was that the lumbar sprain or strain was 9 causally related to his fall in September 2000; 10 is that right? 11 A. Yes. 12 Q. And the bilateral hamstring 13 contractures may or may not have been related? 14 A. I do not think they were 15 particularly related. I think it was probably 16 just his nature of being one who drives trucks 17 and sits at a desk through the long hours of 18 the day tend to develop hamstring contractures. 19 Q. Then you switched his medication, 20 didn't you? 21 A. Yes. 22 Q. Why did you switch him from 23 Vicodin to Indocin? 24 A. Well, Vicodin is a narcotic and 25 simply covers up the symptoms, whereas Indocin</p>

Ferguson vs. Ryder

John M. Roberts, M.D., 2/4/03

<p>17</p> <p>1 is an anti-inflammatory and will more directly</p> <p>2 treat the underlying problem.</p> <p>3 Q. What was your prognosis, then,</p> <p>4 that day?</p> <p>5 A. It was good. I thought that there</p> <p>6 would be a gradual resolution of his symptoms</p> <p>7 as time went on.</p> <p>8 Q. Did you then dictate a letter to</p> <p>9 Dr. McTighe later that day?</p> <p>10 A. Yes, I did.</p> <p>11 Q. I've marked that as Exhibit 21.</p> <p>12 And, in essence, what did you tell Dr. McTighe?</p> <p>13 A. That firstly, he was not a</p> <p>14 surgical candidate. There was nothing that</p> <p>15 required surgical intervention. I felt the</p> <p>16 majority of his symptoms were soft tissue</p> <p>17 related, and that would refer to the muscles in</p> <p>18 the back. I told him that I shifted him from</p> <p>19 the Vicodin to the Indocin. I recommended</p> <p>20 light duties, and I'd recommended a possible</p> <p>21 consultation with a physiatrist, physical</p> <p>22 therapy specialist if the symptoms persisted.</p> <p>23 Q. Now, have your impressions changed</p> <p>24 since January 2nd of 2001?</p> <p>25 A. They have, in that when you first</p>	<p>19</p> <p>1 wise to get the CAT scan. And I reported on</p> <p>2 that on 8/30/01, and it showed discs bulging at</p> <p>3 L4-L5 L5-S1. That's an insignificant age</p> <p>4 related process, but it did show facet</p> <p>5 hypertrophy; that is, enlargement of the joints</p> <p>6 at L5-S1, which was precariously close to the</p> <p>7 nerve roots.</p> <p>8 The working diagnosis that I had</p> <p>9 initially did change, in that his symptoms, the</p> <p>10 left leg pain -- at least based on the</p> <p>11 information available to me, the left leg pain</p> <p>12 was consistent with my finding on examination,</p> <p>13 decreased sensation in that L4-L5 distribution.</p> <p>14 His CAT scan goes on to show that</p> <p>15 there is some very suspicious compression or</p> <p>16 irritation of his nerve roots. So it all</p> <p>17 seemed to fit together that he had sustained an</p> <p>18 injury to the nerve, and based upon that, when</p> <p>19 Mr. Honerlaw asked me for an updated report,</p> <p>20 and that one dated January 22nd of '03, I had</p> <p>21 said to him that I thought the pieces fit</p> <p>22 together; that the left leg symptoms were</p> <p>23 reflected by the positive EMG, and were shown</p> <p>24 in the CAT scan to be due to irritation at that</p> <p>25 L5-S1 level. And based upon his information is</p>
<p>18</p> <p>1 see a patient, you establish a working</p> <p>2 diagnosis, so your first opinions or</p> <p>3 assessments are not absolutely carved in stone.</p> <p>4 I saw him next six months later.</p> <p>5 Q. That was July 17th?</p> <p>6 A. Yes. And I don't remember the</p> <p>7 circumstances, but he was angry about the care</p> <p>8 he was receiving elsewhere. I'm not sure what</p> <p>9 the basis of that was, but we reviewed his MRI</p> <p>10 scan again, and we had recommended ultimately</p> <p>11 that he undergo a CAT scan.</p> <p>12 An MRI scan is somewhat incomplete</p> <p>13 in evaluating the lumbar spine from a bony</p> <p>14 standpoint. It's not a superior way of imaging</p> <p>15 the bony anatomy. It is certainly superior for</p> <p>16 looking at discs and nerves, but you can't</p> <p>17 always appreciate the proximity of a nerve to a</p> <p>18 bone spur or the bony anatomy on it.</p> <p>19 He did undergo EMG performed by</p> <p>20 Dr. Mitchell Simons that showed acute and</p> <p>21 chronic radiculopathy, which actually harbors</p> <p>22 back to what we found in his initial</p> <p>23 examination that there was a decreased</p> <p>24 sensation in that L4-L5 pattern.</p> <p>25 With that, then I decided it was</p>	<p>20</p> <p>1 why I offered the opinion that I thought there</p> <p>2 was a causation here.</p> <p>3 Q. So was the facet hypertrophy</p> <p>4 traumatically induced?</p> <p>5 A. No, over a long-standing period of</p> <p>6 time. So it's an accumulative sort of process,</p> <p>7 over years and years.</p> <p>8 Q. So it would not have been caused</p> <p>9 by the September 4, 2000 fall?</p> <p>10 A. No, that's correct.</p> <p>11 Q. Can you say, to a reasonable</p> <p>12 degree of medical certainty, when Mr. Ferguson</p> <p>13 sustained his injury to the nerve?</p> <p>14 A. I learned just before we started</p> <p>15 today that he did have a prior back-related</p> <p>16 condition and where there was an absence from</p> <p>17 work. I don't think that anyone with a</p> <p>18 significant degree of nerve irritation as</p> <p>19 Mr. Ferguson has shown would be able to work</p> <p>20 productively for very long, particularly in the</p> <p>21 capacity as a long-distance hauler or an</p> <p>22 automotive hauler. Unless there is other</p> <p>23 information to say that his left leg pain</p> <p>24 was -- that he'd been treated for it prior to</p> <p>25 the accident of 9/4/2000, I do think that there</p>

Ferguson vs. Ryder

John M. Roberts, M.D., 2/4/03

<p>21</p> <p>1 is a basis to say that there is a connection</p> <p>2 here, within reasonable medical probability.</p> <p>3 Q. Well, let me show you Dr. Siegel's</p> <p>4 May 10, 1999 report.</p> <p>5 A. Okay.</p> <p>6 Q. Which I've marked as Defendant's</p> <p>7 Exhibit 17. It's in everyone's stack. And I'd</p> <p>8 ask you to take a moment or two to review</p> <p>9 Dr. Siegel's report to Attorney Honerlaw, and</p> <p>10 then I'd like you to answer that question</p> <p>11 again.</p> <p>12 A. (After reviewing document) Okay.</p> <p>13 Could you restate your question?</p> <p>14 Q. Based upon this additional</p> <p>15 information, which is Dr. Siegel's report of</p> <p>16 May 10, 1999, can you say, to a reasonable</p> <p>17 degree of medical certainty, that the injury</p> <p>18 suffered or that Mr. Ferguson complains of to</p> <p>19 his nerve was proximately caused by the</p> <p>20 September 4, 2000 fall?</p> <p>21 A. Looking at Dr. Siegel's evaluation</p> <p>22 really does not give me any reason to think</p> <p>23 that he had nerve involvement at that time,</p> <p>24 unless I'm missing something in this. So</p> <p>25 there's nothing in this that makes me think</p>	<p>23</p> <p>1 MR. HONERLAW: Just so we're</p> <p>2 clear, the report from Dr. Siegel is -- he</p> <p>3 examined him for a, what was it, May of 1997</p> <p>4 injury, which I think is the Kettering records</p> <p>5 that you're looking at right now.</p> <p>6 A. Okay. I follow.</p> <p>7 Q. And would you agree that it</p> <p>8 appears as though this May 7th, 1997 emergency</p> <p>9 room report is related to or relates to the</p> <p>10 fall which Dr. Siegel is talking about in his</p> <p>11 May 10, 1999 report?</p> <p>12 A. Yes.</p> <p>13 Q. And you weren't aware of the</p> <p>14 existence of this injury?</p> <p>15 A. No.</p> <p>16 Q. Prior to today, were you?</p> <p>17 A. No, I was not.</p> <p>18 Q. And were you aware that his lumbar</p> <p>19 spine was x-rayed on May 7th of 1997?</p> <p>20 A. No, I wasn't aware of that.</p> <p>21 Q. Let me show you what I've marked</p> <p>22 as Defendant's Exhibit 6, and what do you</p> <p>23 recognize that document to be?</p> <p>24 A. It's an x-ray report from</p> <p>25 Kettering Memorial Hospital, dated 5/7/97, for</p>
<p>22</p> <p>1 otherwise or to change my opinion.</p> <p>2 The patient had decreased motion</p> <p>3 in the back, and had a known injury to his</p> <p>4 sacroiliac joint on the right side, I believe.</p> <p>5 And Dr. Siegel notes that neurologically, the</p> <p>6 patient was intact.</p> <p>7 Now, he doesn't mention anything</p> <p>8 about a sensory examination, but I find nothing</p> <p>9 in here to believe that he had a neurologic</p> <p>10 injury present at that time.</p> <p>11 Q. He certainly had significant</p> <p>12 complaints of low back pain as of May 10, 1999,</p> <p>13 didn't he?</p> <p>14 A. Yes, he did.</p> <p>15 Q. And were you aware that he had</p> <p>16 similar complaints of low back pain two years</p> <p>17 previously, in May of 1997?</p> <p>18 A. No, I'm not aware of that.</p> <p>19 Q. Let me show you what has been</p> <p>20 marked as Defendant's Exhibit 5, which is the</p> <p>21 Kettering Memorial Hospital emergency room</p> <p>22 report from May 7th of 1997. Ask you to take a</p> <p>23 minute to look at this.</p> <p>24 A. It's curious that this is the same</p> <p>25 mode of injury as the other two events.</p>	<p>24</p> <p>1 an injury sustained at work. It's a complete</p> <p>2 set of films of the lumbar spine, showing no</p> <p>3 abnormalities.</p> <p>4 Q. And then on that same date, a</p> <p>5 thoracic spine examination was done, and let me</p> <p>6 show you what's been marked as Exhibit 7.</p> <p>7 A. That's correct. And it again</p> <p>8 shows no abnormality.</p> <p>9 Q. And let me show you what I've</p> <p>10 marked as Exhibit 18, ask you if you can</p> <p>11 identify that?</p> <p>12 A. Complete x-ray of the lumbar spine</p> <p>13 on 9/7/2000, basically a normal study.</p> <p>14 Q. And it even references the May 7,</p> <p>15 '97 study, doesn't it?</p> <p>16 A. No change compared to 5/7/97, yes.</p> <p>17 Q. And all three of those reports</p> <p>18 were taken by the radiologist at Kettering</p> <p>19 Medical Center?</p> <p>20 A. Yes.</p> <p>21 Q. All right. So at least as far as</p> <p>22 x-ray examination is concerned, his condition</p> <p>23 between the fall on May 7th of '97 and</p> <p>24 September 4th of 2000 was unchanged?</p> <p>25 A. That's correct.</p>

Ferguson vs. Ryder

John M. Roberts, M.D., 2/4/03

<p>25</p> <p>1 Q. Well, since Mr. Ferguson didn't 2 tell you about his 1997 fall, am I safe in 3 assuming he didn't tell you about his 1988 fall 4 either? 5 A. That's correct. I'm not aware of 6 that. 7 Q. Let me show you what I've marked 8 as Defendant's Exhibit 3, which is a report of 9 Dr. Marc Whitsett, based on examination he 10 conducted of Mr. Ferguson on June 9th of 1995, 11 and ask you if you've reviewed this before 12 today? 13 A. No, I have not seen this before. 14 Q. Okay. 15 A. (After reviewing document) Okay. 16 Q. Now, this report includes a 17 history that was provided by Mr. Ferguson to 18 Dr. Whitsett, doesn't it? 19 A. Yes. 20 Q. And it looks like he had another 21 similar fall, doesn't it? 22 A. Yes, it sure does. 23 Q. At least according to the history, 24 it says he fell back while tightening some 25 chains and injured his lower back?</p>	<p>27</p> <p>1 whole person impairment for this November 10, 2 '88 fall, doesn't he? 3 A. Yes. 4 Q. And it looks like he's using the 5 AMA Guidelines in giving him a two percent 6 whole person impairment? 7 A. Yes, I see that. 8 Q. Now, did you know that Dr. Siegel 9 also gave him a whole person impairment rating 10 for injury to his low back? 11 A. Yes, I did see that. 12 Q. And he gave him an additional 13 eight percent, didn't he? 14 A. Yes. 15 Q. And both these impairment ratings 16 were for injuries to the low back, weren't 17 they? 18 A. Yes. 19 Q. And both of them predated 20 September 4th of 2000, didn't they? 21 A. Yes. 22 Q. And you weren't aware of either of 23 those when you examined him at any time, were 24 you? 25 A. No.</p>
<p>26</p> <p>1 A. Yes. 2 Q. And those x-rays didn't reveal any 3 acute fracture or dislocation; is that right? 4 A. Yes, that's correct. 5 Q. And at that time, as of June 9th 6 of 1995, Dr. Whitsett records Mr. Ferguson 7 complained of no significant back pain, but 8 that it comes and goes, and occasionally it 9 goes out to the point that he's in bed for up 10 to periods of one week. Do you see that? 11 A. Yes, I do. 12 Q. And it goes on to say, He does use 13 a low back brace with work, doesn't it? 14 A. Yes. 15 Q. Certainly, you would have expected 16 Mr. Ferguson, if he was being forthright, to 17 convey to you the fact that he had a low back 18 injury in 1988 as a result of a fall, another 19 low back injury in May of 1997 as a result of a 20 fall, both of which preceded his accident in 21 September of 2000? 22 A. Well, it's certainly more than a 23 trivial history, so yes, I would have expected 24 some report of this. 25 Q. Now, Dr. Whitsett gives him a</p>	<p>28</p> <p>1 Q. Yet you specifically asked him if 2 he had a back history, didn't you? 3 A. We did. 4 Q. Now, did you send Mr. Ferguson to 5 Dearborn County Hospital for an EMG? 6 A. I don't think I was the one to 7 send him for that. 8 Q. I believe you have a copy of the 9 Dearborn County Hospital EMG in your file, 10 though? 11 A. Yes, there is a copy here. 12 Q. Okay. 13 A. Actually, I did send him for that 14 on 7/20/01. 15 Q. And the EMG was performed on 16 August 7th, is that correct, of 2001? 17 A. If that's what it indicates, yes. 18 Q. I'll let you find it. 19 A. Yes, here it is. 20 Q. Now, page 2 of 2 of the EMG has a 21 space for comments and impression. Do you see 22 that? 23 A. Yes. 24 Q. And Dr. Swartzel writes, There are 25 findings compatible with an old or chronic --</p>

Ferguson vs. Ryder

John M. Roberts, M.D., 2/4/03

<p>29</p> <p>1 what's that, left L5 radiculopathy appearing</p> <p>2 mild to moderate. Did I read that correctly?</p> <p>3 A. Yes, you did.</p> <p>4 Q. Now, when he refers to findings</p> <p>5 compatible with old or chronic L5 radiculopathy</p> <p>6 on August 7th of 2001, would you interpret that</p> <p>7 to mean relating back to the fall that he had</p> <p>8 in 1988, or the fall that he had in 1997, or</p> <p>9 the fall that he had in 2000, or can you not</p> <p>10 say which of those falls would be compatible</p> <p>11 with an old or chronic L5 radiculopathy?</p> <p>12 A. Based on the study alone, you</p> <p>13 cannot make any temporal relationship or</p> <p>14 temporal determination.</p> <p>15 Q. Because the EMG doesn't</p> <p>16 distinguish between time periods that extend</p> <p>17 that far back?</p> <p>18 A. That's right.</p> <p>19 Q. So would you have to rely</p> <p>20 essentially on your history --</p> <p>21 A. Yes.</p> <p>22 Q. -- to make that determination?</p> <p>23 A. I would.</p> <p>24 Q. And, of course, you know</p> <p>25 Mr. Ferguson didn't share with you a complete</p>	<p>31</p> <p>1 have any additional questions.</p> <p>2 CROSS-EXAMINATION</p> <p>3 BY MR. WINTER:</p> <p>4 Q. Dr. Roberts, I'm Bob Winter. I</p> <p>5 represent Allied System and Allied Automotive</p> <p>6 Group who, by coincidence, happen to be</p> <p>7 Mr. Ferguson's employer.</p> <p>8 A. Okay.</p> <p>9 Q. Just so we can clear up a</p> <p>10 housekeeping matter, my partner is Michael</p> <p>11 DeFrank.</p> <p>12 A. Okay. We've talked before on</p> <p>13 other matters.</p> <p>14 Q. Yes. And I wanted to make it</p> <p>15 understood and that if you can, please,</p> <p>16 describe what role, if any, that Michael</p> <p>17 DeFrank's role as your attorney played in the</p> <p>18 testimony you've given here today?</p> <p>19 A. Zero.</p> <p>20 Q. That's what I thought, but we</p> <p>21 might as well clean it up. Your discussion of</p> <p>22 facetar hypertrophy, I'm going to mispronounce</p> <p>23 that, forgive me, is found from the C-scan that</p> <p>24 appears in your records?</p> <p>25 A. On the CAT scan, yes.</p>
<p>30</p> <p>1 history, did he?</p> <p>2 A. He did not, but the one element in</p> <p>3 this that I haven't yet seen in the evidence</p> <p>4 you're showing me is the description of the</p> <p>5 left leg pain. I think at this point, clearly</p> <p>6 I -- when I had said in my letter of 1/22/03</p> <p>7 that he sustained lumbar strain/sprain, I</p> <p>8 suspect he did, although it's clear that he's</p> <p>9 had that before. And I said he had an</p> <p>10 aggravation of his facetar arthropathy. I</p> <p>11 would say at this stage I would rate that of a</p> <p>12 mild aggravation of his facet arthropathy.</p> <p>13 But the one thing I haven't seen</p> <p>14 that was present before this injury of 2000 was</p> <p>15 the L5 radiculopathy, unless you're about to</p> <p>16 show me that.</p> <p>17 MR. SCHOENI: Well, I'll be frank</p> <p>18 with you, Dr. Roberts, there are a half dozen</p> <p>19 or so doctors that have treated Mr. Ferguson</p> <p>20 whose records I don't have, and we're going to</p> <p>21 get those, and then maybe we'll have to come</p> <p>22 back, but for today, I'm done.</p> <p>23 THE WITNESS: Okay.</p> <p>24 MR. SCHOENI: I'm going to turn it</p> <p>25 over to Mr. Paulus and Mr. Winter, see if they</p>	<p>32</p> <p>1 Q. Did you actually see the film?</p> <p>2 A. I don't recall. I think I did see</p> <p>3 the original films, because then I also make a</p> <p>4 comment about Dr. Botsford's report.</p> <p>5 Q. Do you know for a fact whether you</p> <p>6 saw the film, as you sit here today?</p> <p>7 A. No.</p> <p>8 Q. Could have, maybe you did, maybe</p> <p>9 you didn't?</p> <p>10 A. Yeah. Based on my dictation, I'm</p> <p>11 fairly certain I saw it, but I can't guarantee</p> <p>12 that.</p> <p>13 Q. Sure. If you could turn to the</p> <p>14 report for me, and I believe it's dated</p> <p>15 August 13, '01?</p> <p>16 A. Yes, I have it right here.</p> <p>17 Q. If I can turn you all's attention</p> <p>18 to here. If I can read the language from the</p> <p>19 report, There's localized -- how do you</p> <p>20 pronounce that?</p> <p>21 A. Hypertrophic.</p> <p>22 Q. -- hypertrophic change along the</p> <p>23 facet joints at this interspace that is S1, I</p> <p>24 believe the right greater than left. This</p> <p>25 results in a slight lateral stenosis right</p>

Ferguson vs. Ryder

John M. Roberts, M.D., 2/4/03

<p>33</p> <p>1 greater than left?</p> <p>2 A. Yes, I did say that.</p> <p>3 Q. Is that the language in the</p> <p>4 report, sir, that you rely upon in stating your</p> <p>5 opinion in Exhibit 2 that the facet</p> <p>6 hypertrophy was noted, which was most likely</p> <p>7 responsible for his neurologic symptoms</p> <p>8 secondary to minor neural entrapment? And take</p> <p>9 a minute to review the CT scan report.</p> <p>10 A. Well, it was certainly part of</p> <p>11 what went into my forming my opinion.</p> <p>12 Q. Or were there other language or</p> <p>13 evidence that you had with regard to the</p> <p>14 facet hypertrophy within the CT lumbar spine?</p> <p>15 A. No, there's no other language</p> <p>16 there that would come in to that, making that</p> <p>17 diagnosis.</p> <p>18 Q. How about anywhere else in the</p> <p>19 records, Dr. Roberts?</p> <p>20 A. No. The EMG study does relate to</p> <p>21 this, and potentially not on the right side,</p> <p>22 but on the left. The left L4-L5 radiculopathy</p> <p>23 and L5 radiculopathy would come from this sort</p> <p>24 of hypertrophy at the L5-S1 level.</p> <p>25 Q. Okay. Again, the radiculopathy,</p>	<p>35</p> <p>1 his leg; but certainly, these other injuries</p> <p>2 could have contributed to it.</p> <p>3 MR. WINTER: I don't have anything</p> <p>4 further, Doctor. Thank you for your time, sir.</p> <p>5 MR. PAULUS: And I will just</p> <p>6 thank you for your time. I don't have</p> <p>7 anything.</p> <p>8 MR. SCHOENI: I've got a couple</p> <p>9 more.</p> <p>10 RECROSS-EXAMINATION</p> <p>11 BY MR. SCHOENI:</p> <p>12 Q. Just so I'm clear, if I can find</p> <p>13 references in the record to complaints that</p> <p>14 predate September 4th of 2000 to left leg</p> <p>15 radiculopathy, that may bear on your opinions</p> <p>16 in this case?</p> <p>17 A. It definitely will, yes.</p> <p>18 Q. Let me show you what's been marked</p> <p>19 as Defendant's Exhibit 12, which is a</p> <p>20 functional capacity evaluation that was</p> <p>21 performed on July 8, 1997, by a physical</p> <p>22 therapist, Barb Michalowski.</p> <p>23 A. (Reviewing document.)</p> <p>24 Q. I'm going to certainly invite you</p> <p>25 to read the entire report if you would like.</p>
<p>34</p> <p>1 though, is -- as far as we're sitting here</p> <p>2 today, is unknown as to when that -- it's an</p> <p>3 old chronic radiculopathy as set forth in the</p> <p>4 EMG?</p> <p>5 A. That's right. The EMG, as I said,</p> <p>6 doesn't tell me. It's the history of what's</p> <p>7 been in the records here that really -- or what</p> <p>8 the patient tells me which comes into making</p> <p>9 that diagnosis.</p> <p>10 Q. You had indicated in Exhibit 2,</p> <p>11 your report, that the facet hypertrophy was</p> <p>12 noted, which was most likely responsible for</p> <p>13 his neurologic symptoms?</p> <p>14 A. I did say that, yes.</p> <p>15 Q. Are there -- based on the history</p> <p>16 that my distinguished colleague, Roger Schoeni,</p> <p>17 has discussed with you, could this undisclosed</p> <p>18 history be another matter that would be maybe</p> <p>19 not likely responsible, but somewhat</p> <p>20 responsible for the neurologic symptoms that</p> <p>21 were reported to you by Mr. Ferguson?</p> <p>22 MR. HONERLAW: Objection.</p> <p>23 A. Yes, it could potentially be, but</p> <p>24 yet I have not seen anywhere in the record that</p> <p>25 he was complaining of radicular-type pain in</p>	<p>36</p> <p>1 I'm going to direct your attention primarily to</p> <p>2 the past medical history section at the bottom</p> <p>3 of page 1 that carries over into the top of</p> <p>4 page 2.</p> <p>5 A. Okay.</p> <p>6 Q. And when the physical therapist</p> <p>7 took Mr. Ferguson's history, he apparently</p> <p>8 related to her pain in his right shoulder, left</p> <p>9 lumbar area, with occasional ache in left hip</p> <p>10 and left knee.</p> <p>11 A. I do see that.</p> <p>12 Q. Which would suggest that as of</p> <p>13 July 8, 1997, he was suffering pain that</p> <p>14 extended down to his left hip and on to his</p> <p>15 left knee?</p> <p>16 MR. HONERLAW: Objection.</p> <p>17 A. It's really not stated that way.</p> <p>18 It's suspicious, but again, it's -- I wish that</p> <p>19 she had detailed the description a little more</p> <p>20 carefully. An occasional ache in the hip and</p> <p>21 left knee, that could be anything. I just</p> <p>22 don't know. That's not a typical description</p> <p>23 of a radicular sort of thing, where you do a</p> <p>24 continuity. So -- although it's concerning,</p> <p>25 it's a poor description of something going on</p>

Ferguson vs. Ryder

John M. Roberts, M.D., 2/4/03

37

1 there.

2 Q. We'll get her file and see if she

3 describes it more accurately.

4 A. That would be very helpful.

5 Q. Let me show you what I've marked

6 as Defendant's Exhibit 10, which is one of

7 Dr. Autry's Reconstructive Orthopaedics, Inc.

8 documents. And it's entitled "Treatment

9 Report," and it appears to be signed by your

10 patient, Mr. Ferguson, on May 12th of 1997. Do

11 you see that?

12 A. Yes, I do.

13 Q. And above that, above his

14 signature, there is a line for date of injury.

15 Do you see that?

16 A. Yes.

17 Q. And what's the date of injury

18 indicated on this report?

19 A. 10/6/94.

20 Q. And what's the impression that's

21 identified on Exhibit 10?

22 A. Lumbar, acute lumbar strain.

23 Q. So it could be that there's

24 another back injury that occurred on

25 October 6th of 1994 that we don't even know

38

1 about?

2 A. Yes.

3 MR. SCHOENI: That's all I have.

4

5 (Signature waived.)

6 JOHN M. ROBERTS, M.D.

7

8 (DEPOSITION CONCLUDED AT 6:25 P.M.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

39

1 CERTIFICATE

2 STATE OF OHIO :

3 : SS.

4 COUNTY OF HAMILTON :

5 I, M. Sue Lopreato, the undersigned,

6 a duly qualified notary public within and for

7 the State of Ohio, do hereby certify that JOHN

8 M. ROBERTS, M.D. was by me first duly sworn to

9 depose the truth and nothing but the truth;

10 foregoing is the deposition given at said time

11 and place by said witness; deposition was taken

12 pursuant to stipulations hereinbefore set

13 forth; deposition was taken by me in stenotypy

14 and transcribed by me by means of computer;

15 submission of the deposition to the witness for

16 examination and signature is expressly waived;

17 I am neither a relative of any of the parties

18 or any of their counsel; I am not, nor is the

19 court reporting firm with which I am

20 affiliated, under a contract as defined in

21 Civil Rule 28(D) and have no financial interest

22 in the result of this action.

23 IN WITNESS WHEREOF, I have hereunto set

24 my hand and official seal of office at

25 Cincinnati, Ohio, this 4th day of March, 2003.

26

27 M. Sue Lopreato

28 Notary Public - State of Ohio

29 My Commission expires:

30 April 14, 2005.

November 11, 2001

Mitchell Simons, M.D.
4242 Hunt Road
Cincinnati, Ohio 45242

Re: David Ferguson

Dear Mitch:

I have asked Mr. David Ferguson to come in for your evaluation. Mr. Ferguson is a commercial car hauler who presents with an acute and chronic left L5 radiculopathy. It is my opinion this is the result of facet hypertrophy with neural entrapment at L5-S1. Because this is degenerative in nature, I have discouraged any type of surgical intervention. In my experience many of these patients end up requiring multiple surgeries and ultimately show no benefit from surgical intervention.

Instead, I have recommended he come in to see you in regard to chronic pain management. He should have his diagnostic studies in his possession for your review. I do currently have him on a 20 lb. lifting restriction.

If you require any additional information, please do contact me.

Cordially,

John M. Roberts, V, M.D.

JMR/bjh



**DEARBORN
COUNTY HOSPITAL**

8-7-01

PATIENT NAME Ferguson, David E.

ROOM NO. (ADDRESS IF OUT-PATIENT)

HOSPITAL NO. 147283 10754141

DOCTOR John Roberts

AGE 7-27-49 SEX M

NERVE STIMULATION STUDIES:

Distal Motor Latency Motor Conduction Distal Sensory Latency
Peroneal 3.96m (1<5.5) BFH - 41 M/sec (1<39)
(5.8m) AFH - 53 M/sec (1<41)
3.82m
(10m)
Peroneal F-wave - 49.8m
R " " - 48.2m

COMMENTS AND IMPRESSION:

There are findings compatible with an old or chronic
OL-5 radiculopathy (mild to moderate).

Thurb.

Robert Swartzel Jr.
ROBERT SWARTZEL JR. M.D.

EXHIBIT B

FERGUSON, DAVID
7/17/03

FOLLOW-UP DR. SIMONS

Mr. Ferguson is here for follow-up. He continues to have trouble with pain in his back and leg and actually it has gotten worse lately. The MRI shows actually a tear in his disc and that is something we need to address because obviously it is due to the sciatica problem and the sprain/strain situation that is all work related. This trouble with the radicular symptoms and work related condition needs to be treated with 2 more epidural steroid injections, which we will of course guide fluoroscopically and also there are some facet nerves involved again that need to be addressed and this will help control his pain. In the meantime we need to get him in to see a spine surgeon as soon as we can. We are going to increase his Kadian to 50 mgs. a day and change his Norco over to Actiq sticks, which will be at 400 micgs. We will get a kidney and liver profile to check his blood chemistry to make sure everything is going okay there and make sure there are no adverse effects from the work related medications. We will see him back for follow-up in a month and hopefully by then we have the epidural authorized and done. He understands the risks of steroid use and the epidurals as well.

Mitchell E. Simons, M.D./ns